Client briefing

The Pensions Regulator

Joint regulatory approach

The Pensions Regulator and the Financial Conduct Authority have announced a joint regulatory strategy for the next five to ten years, to address the way in which people save for retirement and access their pension. The following four key issues have been identified:

- Increase access and participation in pension schemes
- Managing pension savings in line with savers' needs
- Protecting pension savings
- Ensuring savers have sufficient knowledge to make informed decisions

Both regulators have outlined their strategy to address the issues and a series of stakeholder seminars is planned for this spring.

Imprisonment and fines

Two directors and five employees of Workchain have been sentenced for criminal offences connected with falsely opting temporary workers out of their auto enrolment scheme.

A fine of £200,000 has been imposed on the company, together with £60,930 costs. The sentences for the individuals included suspended prison sentences (the greatest one being four months), costs orders and community service.

The company fine is the largest one yet imposed in relation to a prosecution brought by the Regulator, and it is the first time a prosecution has resulted in custodial sentences.

Dominic Chappell

Dominic Chappell has lost his appeal against his conviction and sentence for his failure to provide information to the Regulator in connection with the collapse of BHS. In January 2018, a court found Mr Chappell guilty and ordered him to pay a £50,000 fine, £37,000 costs and a £170 victim surcharge. Mr Chappell appealed, but it was dismissed by the Crown Court as being "completely without merit". Mr Chappell has been ordered to pay the original fine and victim surcharge, but the costs have increased to £73,900.

Master trusts

The Regulator has warned schemes to check whether they are a master trust, or risk breaking the law. The statement was issued in response to new legislation, under which existing master trusts must be authorised by the Regulator by 1 April this year.

Whilst most trustees will know if their scheme is a master trust, the definition is wide enough to potentially catch out the unwary. In essence, a master trust is an occupational pension scheme that provides money purchase benefits in respect of unconnected employers. This could catch, for example, a multi-employer scheme, in which an employer continues to participate following a corporate sale out of the group.

The Regulator has launched a guide that helps trustees decide if their scheme falls within the definition.

Consultations and Inquiries

Response to consultation

The Government has published its response to its 2018 consultation on improvements to the Regulator's powers and increased protections for members of defined benefit schemes. The response sets out the Government's proposals to, including the introduction of two new criminal offences to prevent and penalise mismanagement of pension schemes.

The first offence will target individuals who wilfully or recklessly mishandle pension schemes, punishable by an unlimited fine and up to seven years in jail. The second will provide redress when an individual fails to comply with a contribution notice, with an unlimited fine for the criminal offence or a civil penalty of up to £1 million.

Consultation on early dispute resolution function for Pensions Ombudsman

The DWP has recently consulted on an expansion of the Pensions Ombudsman's remit, following the transfer of TPAS's functions to the Ombudsman in April 2018. Proposals centred on a new early resolution process, to allow the Ombudsman to resolve disputes before they proceed to a formal determination.

The consultation also proposed to allow employers who choose a GPPP arrangement for their employees, to bring a complaint or refer a dispute on their own behalf to the Ombudsman, against the provider or administrator.

Consultation on DB scheme consolidation

The DWP has recently consulted on the measures needed to support the consolidation of DB schemes into "superfunds". The Government's 2018 White Paper indicated that it was keen to embrace this development. Benefits of superfunds can include improved funding (by reducing the risks associated with future employer insolvencies), economies of scale and access to investment opportunities.

Current legislation does not prevent superfunds, but it does not provide a suitable regulatory framework to ensure member protection in these new circumstances. The consultation therefore sought views on how superfunds should be authorised and regulated.

Pensions dashboard

The DWP has recently consulted on the pensions dashboard, which will be a single on-line location for all of an individual's pension information (including state and private pensions). The consultation confirmed that legislation to facilitate industry-led dashboards will be introduced when Parliamentary time allows, with a non-commercial dashboard to be hosted by the Single Financial Guidance Body.

Trustee participation will initially be voluntary, but compulsory participation will be phased in once the relevant legislation is in place. The "on-boarding" process is anticipated to take place within four years from the introduction of the first dashboards in 2019.

Pensions Protection Fund

Update on 50% benefit minimum

The PPF has issued a statement following the CJEU judgement that each member of a scheme in the PPF must receive at least 50% of his benefits, including taking account of future pension increases (*Grenville Hampshire v The Board of the PPF*). Most members will already receive benefits in excess of this minimum.

Until new legislation is issued, the PPF is adopting an interim approach based on contacting affected members (and where possible the previous scheme administrators) to obtain information sufficient to calculate the scheme benefits to which members would originally have been entitled. This can then be compared with the level of compensation being received.

Potentially affected members have been split into groups, with those affected by the long service cap being dealt with first.

Recent cases

Age discrimination
McCloud* and *Sargeant

The Court of Appeal has dismissed an appeal by the Government, and held that changes made to firefighters' and judges' pensions were discriminatory.

The two cases (heard together by the CA) concerned public sector pension reforms. Transitional provisions were enacted that allowed older members of the original more generous scheme to remain, whilst younger members received either tapered or no protection and membership of a less generous scheme. Cases were originally brought in the Employment Tribunal, claiming that the changes were discriminatory on the grounds of age (and in the case of the judges' pension scheme, also on the grounds of race and sex, due to the demographics of the affected groups).

The Government has sought leave to appeal, and in the meantime, planned benefit improvements to certain public sector schemes have been put on hold.

Change from RPI
Barnardo's v Buckinghamshire and others

The Supreme Court has dismissed the employer's appeal to switch from RPI to CPI in relation to the calculation of pension increases. The change would have significantly reduced the scheme's deficit and the employer had argued that it should be allowed under the scheme rules, which defined RPI as "the General Index of Retail Prices published by the Department of Employment or any replacement adopted by the Trustees without prejudicing Approval".

Upholding the earlier decisions of the High Court and the Court of Appeal, the Supreme Court held that the words of the rule required a two stage process to change the index: RPI must first be officially replaced by another index, and then that index adopted by the trustees of the scheme for the purposes of pension increases. As the RPI had not been replaced, the basis for calculating pension increases under the scheme could not be altered.

Fixed protection
Gary Hymanson v Revenue & Customs Commissioners

A tax tribunal has upheld an appeal against a decision of HMRC to revoke a certificate of fixed protection. The individual had benefitted from fixed protection, granted by HMRC in 2012. Following this, he continued to make payments into registered pension schemes until April 2015, having misunderstood the consequences of doing so i.e. he would lose his fixed protection. Consequently, HMRC revoked the certificate of fixed protection.

The individual appealed, arguing that the additional contributions should be set aside and treated as if they had not happened. Having considered the relevant legislation and the circumstances of the payments (including the disproportionate impact on the individual of a £50,000 tax charge as a consequence of making £7,000 of pension contributions), the tribunal upheld the appeal.

Looking ahead

Automatic enrolment

On 6 April 2019, the statutory minimum employer contribution for an auto-enrolment DC scheme will rise to 3%, and the minimum total contribution (for employer and employee, including tax relief) will increase to 8%. A worker will need to earn £10,000 to qualify for automatic enrolment, and pensionable earnings will be between £6,136 and £50,000.

Advising on pension transfers

Following a 2018 consultation, the FCA has published new rules and guidance, aimed at improving the quality of pension transfer advice. The rules include changing the required adviser qualifications and altering the assumptions used to value DB benefits.

Guidance has also been issued in relation to a two adviser model, so that the transfer advice can take account of both the proposed receiving scheme and the proposed investments (appropriateness of investments was an issue highlighted by the recent British Steel transfer scandal).

The rules and guidance will come into force during 2019.